

HOUSE BILL 690

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 12,
relative to the procurement of goods and services
by the state of Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 3, Part 2, is amended by
adding the following language as a new, appropriately designated section:

§ 12-3-2__.

(a) The department may use the best-value procurement methodology for purchases of goods and services under this chapter when the department determines that use of such methodology is in the best interest of the state. The department shall develop purchasing policies and procedures to be followed when using best-value procurement methods including criteria for selection and evaluation processes. Purchasing policies and procedures shall be subject to approval by the board of standards.

(b) The department shall consider the following factors when developing procedures and policies pursuant to subsection (a):

(1) Purchase price including, but not limited to, installation cost, life cycle costs, and training cost;

(2) Bidder qualifications and experience, including indicators of probable performance under the contract such as past vendor performance, a vendor's financial resources, a vendor's demonstrated capability to perform, and a vendor's ability to provide reliable maintenance agreements and support;

(3) Evidence of the quality and reliability of goods and services that meet technical specifications;

(4) Delivery terms;

(5) The effect of a purchase on agency productivity; and

(6) Any other factors that can be evaluated and are relevant to determining the best value in the context of a particular purchase.

(c) The best-value policies and procedures shall address evaluation criteria for awarding contracts.

(d) The best-value procurement methodology may include a procedure for the submission of best and final bids.

SECTION 2. Tennessee Code Annotated, Section 12-3-203(f), is amended by inserting the following language at the end of the first sentence of the subsection:

; provided that contracts awarded pursuant to the best-value procurement methodology shall be awarded to the responsible and responsive bidder whose bid offers the overall best value to the state as determined by an evaluation based on the requirements and criteria set forth in the invitation to bid.

SECTION 3. Tennessee Code Annotated, Title 12, Chapter 3, Part 2, is amended by adding the following language as a new, appropriately designated section:

§ 12-3-2__.

The commissioner of general services may authorize the procurement of goods in which the vendor's liability is limited.

(a) The commissioner shall not authorize a limitation of liability unless the commissioner determines that:

(1) Authorizing the limitation of liability is necessary to prevent harm to the state caused either by a failure to obtain the goods sought or by the higher cost of such goods due to the failure to authorize such limitation of liability; or

(2) Authorizing the limitation of liability is commercially reasonable in light of the risk to the state created by the type of goods purchased and the purposes for which they will be used.

(b) The department shall not agree to limit the liability of any vendor for intentional torts, criminal acts, or fraudulent conduct.

(c) In no event shall a limitation of liability permitted by this section be authorized for less than two (2) times the value of the contract.

SECTION 4. This act shall take effect January 1, 2008, the public welfare requiring it.